S.B.CIVIL CONTEMPT PETITION NO.8/2004

Smt. Sarla
vs.
Narendra Kumar

DATE OF ORDER ::: 27.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Ranjeet Joshi, for the petitioner.
Mr. S Kala, for the respondent.

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Heard learned counsel for the parties.

A petition for obtaining a decree for divorce was filed by the respondent/contemner which was decreed by the trial court vide judgment and decree dated 13.9.2002. To challenge that judgment and decree, the petitioner preferred appeal before this Court on 17.9.2002 within a period of four days only from the date of decree. The petitioner also apprehended that the respondent may contract the second marriage and, therefore, she preferred appeal forthwith and sought interim order from this Court upon which this Court granted injunction order on 23.9.2002 directing the respondent not to contract any second marriage.

According to learned counsel for the contemner, notice of even stay petition was not served upon the respondent

uptil 19.1.2004 and after expiry of period of limitation for preferring appeal under Section 28 of the Hindu Marriage Act, the respondent contracted second marriage on 13.12.2002. In view of above, according to learned counsel for the respondent, ultimately, this Court after taking note of this fact dismissed the stay petition by order dated 15.3.2004.

Learned counsel for the petitioner vehemently submitted that the petitioner preferred appeal not only without delay but with promptness and within 4 days from the date of judgment and decree of the trial court and obtained injunction order from this Court within 7 days from filing of the appeal. The limitation for filing appeal is 30 days. The petitioner did not wait and delayed the matter by filing appeal on the last date of limitation or sought any extension of limitation on the ground of time taken in obtaining the certified copy of the judgment. It is also submitted that the respondent was in service of Sanatan Dharm Rajkiya Mahavidhyalaya, Beawar, District Ajmer and notice was served on the Principal of the college on 20.11.2002. The respondent deliberately avoided the service which is apparent from the record itself.

In view of the above, the respondent had full knowledge of pendency of appeal and, therefore, his contracting second marriage tentamounts to wilful disobedience of the court's order.

I considered the submissions of learned counsel for the

parties.

It is true that the petitioner preferred appeal without any delay and she had apprehension that the respondent will contract second marriage, therefore, she obtained the injunction order but technically even the notice of the appeal was not served upon the respondent before the date of alleged marriage of respondent, apart from the fact that the stay order was also not served. Therefore, in the facts of this case, it cannot be said that the respondent has willfully disobeyed the injunction order of this Court.

However, it is made clear that the petitioner preferred appeal not only well within time but with extreme promptness to challenge the divorce decree and Section 15 of the Hindu Marriage Act provides that the spouse is restrained from contracting second marriage when an appeal is preferred by the aggrieved party against the divorce decree and is pending. In view of the above, if any offence is made out, then the petitioner will be free to take appropriate steps for punishing the respondent and may obtain relief under Section 17 of the Hindu Marriage Act also, in case, she wishes to do so.

Accordingly, this contempt petition is dismissed and the contempt notices are discharged.

(PRAKASH TATIA), J.

S.Phophaliya